



State of Wisconsin
2007 - 2008 LEGISLATURE

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2007 SENATE BILL 273

September 25, 2007 - Introduced by Senators A. LASEE, PLALE, HANSEN, KAPANKE and SCHULTZ, cosponsored by Representatives BIES, BALLWEG, BOYLE, DAVIS, HAHN, KERKMAN, LEMAHIEU, MOLEPSKE, MONTGOMERY, MURSAU, NERISON, NYGREN, A. OTT, PETERSEN, SHILLING, TAUCHEN and ZEPNICK. Referred to Committee on Commerce, Utilities and Rail.

1 **AN ACT** *to repeal* 182.0175 (1) (c) 1., 182.0175 (1) (c) 2. and 182.0175 (1m) (b);
2 *to renumber and amend* 101.16 (1), 101.16 (3), 101.16 (4), 101.16 (5) and
3 182.0175 (1) (c) (intro.); *to amend* 101.02 (20) (a), 101.02 (21) (a), 101.16 (2),
4 101.16 (6), 182.0175 (1m) (a), 182.0175 (1m) (bm) and 182.0175 (1m) (d) 5.; and
5 *to create* 101.16 (1) (intro.), 101.16 (1) (a), 101.16 (1) (b) 1. to 5., 101.16 (1) (c),
6 101.16 (1) (d), 101.16 (3) (title), 101.16 (3) (b), 101.16 (3g), 101.16 (3r), 101.16
7 (4) (title), 101.16 (4) (b), 101.16 (4) (c), 101.16 (5) (title), 101.16 (5) (b), 101.16
8 (5) (c), 101.16 (5) (d), 101.16 (5m), 101.19 (1) (L), 182.0175 (1) (bv), 182.0175
9 (1m) (d) 4m., 182.0175 (1m) (e), 182.0175 (2m) (bm) (title) and 182.0175 (2m)
10 (br) of the statutes; **relating to:** the regulation of certain suppliers of liquefied
11 petroleum gas, applicability of the statewide system for notification of the

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1 location of transmission facilities, granting rule-making authority, and
2 providing a penalty.

Analysis by the Legislative Reference Bureau***Suppliers of liquified petroleum gas***

Under current law, the Department of Commerce (Commerce) is authorized to promulgate rules for the installation, operation, repair, and maintenance of equipment for the storage, transportation, and use of liquefied petroleum gas (LPG) that is used for fuel purposes. Types of liquefied petroleum gases include propane gas and butane gas.

This bill requires that a supplier who fills containers with LPG, which is intended to be used directly by the consumer, must be licensed. The bill authorizes commerce to establish a fee for this license. The bill also requires such a supplier of LPG maintain proof of insurance or other financial means to compensate third parties for bodily injury and property damage for incidents associated with the release of LPG. The bill specifies the types of insurance or other financial means that the supplier may use.

Current law also requires that installers of equipment that use LPG for fuel purposes furnish the customer a statement showing the customer how the design, location, and installation of the equipment is in compliance with the rules promulgated by Commerce. This bill imposes additional notice requirements. Under the bill, a customer of a propane gas supplier must notify the supplier of any interruption in the operation of the customer's propane gas system due to modifications, repairs, servicing, or a replacement of the system that is performed by any person other than the supplier. The bill defines for purposes of this notification requirement that a "propane gas system" be one that has a total water capacity of at least 100 gallons. The bill establishes a time frame for this notice provided by the customer. The bill also requires that the supplier give the customer written notice of the customer's duty to notify when the supplier first delivers propane gas to the customer.

The bill also authorizes a licensed supplier who suffers damages caused by the filling of LPG containers by a unlicensed supplier to sue for an injunction and for monetary relief. The bill provides a formula for calculating the amount of the monetary award.

Statewide communication system

Under current law, owners of "transmission facilities" of electricity, gases, water, and other energy or telecommunication sources are required to be members of a statewide communication system under which a single operational center receives notices of proposed excavation and transmits certain information to the transmission facility owners affected by those notices. This system is commonly referred to as the "diggers hotline." Under current law, propane and other fuel storage tanks and pipelines are excluded from the definition of "transmission facilities" if they do not cross the public rights-of-way and if they are located on

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property that is leased or owned by the owners of the tanks and pipelines (private fuel systems). Therefore, none of the notification or excavation requirements under the statewide system apply to private fuel systems. As to transmission facilities other than private fuel systems that do not cross rights-of-way and that are on property leased or owned by the owner of the facilities (private transmission facilities), the owners of the transmission facilities are not required to be members of the statewide system. Examples of these private transmission facilities are underground lines from the principal building to a garage or barn or an underground sprinkler system. However, excavators are required to take reasonable action to learn the location of these facilities and owners of these facilities are required to repair and inspect the facilities if they are notified that these facilities have been damaged. Under the bill, private fuel systems are treated in the same manner as private transmission facilities.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 101.02 (20) (a) of the statutes, as affected by 2005 Wisconsin Act
2 456, is amended to read:

3 101.02 **(20)** (a) For purposes of this subsection, “license” means a license,
4 permit or certificate of certification or registration issued by the department under
5 ss. 101.09 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.15 (2) (e), 101.16 (3g), 101.17,
6 101.177 (4) (a), 101.178 (2) or (3) (a), 101.63 (2) or (2m), 101.653, 101.73 (5) or (6),
7 101.82 (2), 101.87, 101.935, 101.95, 101.951, 101.952, 101.985 (1) to (3), 145.02 (4),
8 145.035, 145.045, 145.15, 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).

9 **SECTION 2.** 101.02 (21) (a) of the statutes, as affected by 2005 Wisconsin Act
10 456, is amended to read:

11 101.02 **(21)** (a) In this subsection, “license” means a license, permit or
12 certificate of certification or registration issued by the department under s. 101.09
13 (3) (c), 101.122 (2) (c), 101.143 (2) (g), 101.15 (2) (e), 101.16 (3g), 101.17, 101.177 (4)

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1 (a), 101.178 (2) or (3) (a), 101.63 (2), 101.653, 101.73 (5) or (6), 101.82 (2), 101.87,
2 101.935, 101.95, 101.951, 101.952, 101.985 (1) to (3), 145.02 (4), 145.035, 145.045,
3 145.15, 145.16, 145.165, 145.17, 145.175, 145.18 or 167.10 (6m).

4 **SECTION 3.** 101.16 (1) (intro.) of the statutes is created to read:

5 101.16 (1) DEFINITIONS. (intro.) In this section:

6 **SECTION 4.** 101.16 (1) of the statutes is renumbered 101.16 (1) (b) (intro.) and
7 amended to read:

8 101.16 (1) (b) (intro.) ~~The term “liquefied~~ “Liquefied petroleum gas” as used in
9 ~~this section, shall mean and include~~ means any material which is composed
10 predominantly of any of the following hydrocarbons or mixtures of the ~~same:~~
11 ~~propane, propylene, butanes, normal butane or isobutane and butylenes. the~~
12 following hydrocarbons:

13 **SECTION 5.** 101.16 (1) (a) of the statutes is created to read:

14 101.16 (1) (a) “Department of transportation cylinder” means a container that
15 holds liquefied petroleum gas and that meets the specifications established by the
16 federal department of transportation.

17 **SECTION 6.** 101.16 (1) (b) 1. to 5. of the statutes are created to read:

18 101.16 (1) (b) 1. Propane.

19 2. Propylene.

20 3. Butane.

21 4. Normal butane or isobutane.

22 5. Butylene.

23 **SECTION 7.** 101.16 (1) (c) of the statutes is created to read:

24 101.16 (1) (c) “Propane gas system” means an assembly consisting of one or
25 more containers that has a total water capacity of at least 100 gallons and a means

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1 of conveying propane gas from the container or containers to a point of connection
2 with devices used to consume the propane gas. A “propane gas system” includes all
3 piping and other components associated with the assembly that are used to control
4 the quantity, flow, pressure, and physical state of the propane gas.

5 **SECTION 8.** 101.16 (1) (d) of the statutes is created to read:

6 101.16 (1) (d) “Retail supplier” means a person engaged in the business of
7 filling containers that have a water capacity of at least 4 pounds with liquefied
8 petroleum gas that is intended to be used directly from the containers as fuel. “Retail
9 supplier” does not include a person who fills such containers with liquefied
10 petroleum gas for the person’s own use.

11 **SECTION 9.** 101.16 (2) of the statutes is amended to read:

12 101.16 (2) RULES. The department shall promulgate rules to ascertain, fix, and
13 order such reasonable standards, rules, or regulations for the design, construction,
14 location, installation, operation, repair, and maintenance of equipment for storage,
15 handling, use, and transportation by tank truck or tank trailer, of liquefied
16 petroleum gases for fuel purposes, and for the odorization of said gases used
17 therewith, as shall render such equipment safe. ~~The promulgation, effect and review~~
18 ~~of standards, rules and regulations adopted under this section shall be controlled by~~
19 ~~this chapter.~~

20 **SECTION 10.** 101.16 (3) (title) of the statutes is created to read:

21 101.16 (3) (title) FILLING, EVACUATING, AND USE OF CONTAINERS.

22 **SECTION 11.** 101.16 (3) of the statutes is renumbered 101.16 (3) (a) and
23 amended to read:

24 101.16 (3) (a) ~~No~~ Except as provided in par. (b), no person, firm or corporation,
25 except other than the owner thereof and those duly of a liquefied petroleum gas

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1 container or a person authorized by the owner ~~so to do, shall, may~~ fill, refill, evacuate,
2 or use in any other manner ~~a liquefied petroleum gas~~ the container ~~or receptacle~~ for
3 any purpose ~~whatsoever~~.

4 **SECTION 12.** 101.16 (3) (b) of the statutes is created to read:

5 101.16 (3) (b) A retail supplier may evacuate a liquefied petroleum gas
6 container not under its ownership in order to transfer the remaining liquefied
7 petroleum gas that is in that container into a container that is under its ownership.

8 **SECTION 13.** 101.16 (3g) of the statutes is created to read:

9 101.16 (3g) LICENSE REQUIRED. (a) No retail supplier may distribute liquefied
10 petroleum gas without holding a license issued by the department. The department,
11 subject to s. 101.02 (20) and (21), shall issue a license to be a retail supplier upon
12 receiving the fee established under s. 101.19 (1) (L) and upon obtaining proof of
13 financial responsibility as required under sub. (3r) (c). The term of the license shall
14 be set by the department, not to exceed 2 years.

15 (b) The department shall publish an annual list of all retail suppliers holding
16 valid licenses under par. (a).

17 **SECTION 14.** 101.16 (3r) of the statutes is created to read:

18 101.16 (3r) FINANCIAL RESPONSIBILITY. (a) Except as provided in par. (b), a retail
19 supplier shall maintain proof of financial responsibility in the amount of \$1,000,000
20 per occurrence with an annual aggregate of \$2,000,000 for compensating 3rd parties
21 for bodily injury and property damages for incidents associated with the release of
22 liquefied petroleum gas.

23 (b) A retail supplier who only fills department of transportation cylinders or
24 who only fills containers for engine and recreational vehicle fueling systems shall
25 maintain proof of financial responsibility in the amount of \$500,000 per occurrence

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1 with an annual aggregate of \$1,000,000 for compensating 3rd parties for bodily
2 injury and property damages for incidents associated with the release of liquefied
3 petroleum gas.

4 (c) A retail supplier may obtain any of the following to prove financial
5 responsibility as required under par. (a) or (b):

6 1. A surety bond that is issued by a surety company that is listed as an
7 acceptable surety for federal bonds on the date that the surety bond is obtained in
8 the most recently published U.S. department of the treasury's circular 570.

9 2. An irrevocable letter of credit that is issued by a financial institution that
10 is authorized to do business in this state or that is federally chartered. The letter of
11 credit shall be for an initial period of at least one year.

12 3. Commercial general liability insurance as an endorsement to an existing
13 policy or as a separate policy from an insurer, or a risk retention group, that is
14 licensed to transact the business of insurance in this state or that is eligible to
15 provide insurance as a surplus lines insurer in one or more states.

16 (d) A retail supplier who fails to maintain proof of financial responsibility as
17 required under par. (a) or (b), may not distribute liquefied petroleum gas at retail
18 until such proof is obtained.

19 (e) Each retail supplier shall file proof of financial responsibility as required
20 under this subsection with the department.

21 (f) A 3rd party that issues a surety bond, letter of credit, or general liability
22 insurance to a retail supplier for purposes of this subsection shall provide written
23 notice to the retail supplier and to the department at least 60 days before canceling,
24 revoking, suspending, or failing to renew the bond, letter, or insurance.

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1 (g) A retail supplier that cancels or fails to renew a surety bond, letter of credit,
2 or general liability insurance shall notify the department at least 60 days before
3 cancelling or failing to renew the bond, letter, or insurance. Upon receipt of the
4 notice, the department shall revoke the retail supplier's license issued under sub.
5 (3g).

6 (h) A financial institution that issues an irrevocable letter of credit to retail
7 supplier for purposes of this subsection shall renew the letter automatically unless
8 notice is given as required under par. (f).

9 **SECTION 15.** 101.16 (4) (title) of the statutes is created to read:

10 101.16 (4) (title) REQUIREMENTS TO PROVIDE INFORMATION.

11 **SECTION 16.** 101.16 (4) of the statutes is renumbered 101.16 (4) (a) amended
12 to read:

13 101.16 (4) (a) ~~Every~~ The person, ~~firm, association or corporation~~ actually
14 performing the work of installing, ~~on and after the effective date of regulations~~
15 ~~promulgated by the department pursuant to this section,~~ equipment utilizing
16 liquefied petroleum gas for fuel purposes, shall furnish the customer or user of said
17 the equipment, a statement, the form of which shall be prescribed by the department,
18 showing that the design, construction, location, and installation of said the
19 equipment conforms with the rules ~~and regulations adopted~~ promulgated by the
20 department pursuant to under this section.

21 **SECTION 17.** 101.16 (4) (b) of the statutes is created to read:

22 101.16 (4) (b) 1. A person who owns, leases, or uses a propane gas system and
23 who is a customer of a retail supplier shall notify the retail supplier of propane gas
24 for the propane gas system of any interruption in the operation of the propane gas
25 system due to the replacement, modification, repair, or servicing of the propane gas

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1 system by any person other than the retail supplier. The customer shall provide the
2 notice at least 7 days in advance of the the interruption in the operation of the
3 propane gas system, except as provided in subd. 2. The retail supplier, or the person
4 replacing, modifying, repairing, or servicing the propane gas system, shall perform
5 a check for leaks or other defects in the propane gas system before placing the
6 propane gas system back into operation in the manner required by rule.

7 2. If the interruption of a propane gas system subject to subd. 1. is due to
8 emergency repair or servicing, the customer shall provide the notice to the retail
9 supplier as soon as possible and no later than 24 hours after the repair or servicing
10 is completed.

11 **SECTION 18.** 101.16 (4) (c) of the statutes is created to read:

12 101.16 (4) (c) Each retail supplier filling a container that is part of a propane
13 gas system shall provide written notice to each customer subject to par. (b) of the
14 customer's duty under par. (b) before the retail supplier's first delivery of propane gas
15 to that customer and shall provide subsequent notices on an annual basis. The notice
16 shall include all of the following information concerning the duty to notify under par.
17 (b):

- 18 1. The name, address, and telephone number of the retail supplier.
- 19 2. The purpose of giving the notification to the retail supplier.
- 20 3. A description of the type of propane gas system that is subject to the
21 notification requirement.
- 22 4. A description of the types of activities that constitute a replacement,
23 modification, repair, or servicing of a propane gas system.
- 24 5. A copy of the provisions under s. 101.16 (4) (b).

25 **SECTION 19.** 101.16 (5) (title) of the statutes is created to read:

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1 101.16 (5) (title) PENALTIES.

2 **SECTION 20.** 101.16 (5) of the statutes is renumbered 101.16 (5) (a) and
3 amended to read:

4 101.16 (5) (a) ~~Any person, firm, association or corporation violating this~~
5 ~~section, who violates sub. (3) or (4) or any standard, rule or regulation adopted by the~~
6 ~~department pursuant to this section, or issuing a false statement under sub. (4),~~
7 ~~promulgated under sub. (2) shall be fined not less than \$25 nor more than \$100, or~~
8 ~~shall be imprisoned not less than 30 days nor more than 6 months.~~

9 **SECTION 21.** 101.16 (5) (b) of the statutes is created to read:

10 101.16 (5) (b) Except as provided in par. (c), any retail supplier who violates
11 sub. (3g) shall forfeit not less than \$500 and not more than \$1,000 for the first offense
12 and not less than \$2,000 but not more than \$5,000 for each subsequent offense.

13 **SECTION 22.** 101.16 (5) (c) of the statutes is created to read:

14 101.16 (5) (c) Any retail supplier who violates sub. (3g) shall forfeit not less
15 than \$200 and not more than \$400 for the first offense and not less than \$800 but not
16 more than \$2,000 for each subsequent offense if the retail supplier is one of the
17 following:

- 18 1. A retail supplier who only fills department of transportation cylinders.
19 2. A retail supplier who only fills containers for engine and recreational vehicle
20 fueling systems.

21 **SECTION 23.** 101.16 (5) (d) of the statutes is created to read:

22 101.16 (5) (d) If a retail supplier is found in violation of sub. (3g), the court shall
23 require that the retail supplier cease distributing liquefied petroleum gas at retail
24 until the retail supplier is issued the license required under sub. (3g).

25 **SECTION 24.** 101.16 (5m) of the statutes is created to read:

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1 101.16 (5m) CIVIL LIABILITY. (a) Any retail supplier who is licensed under sub.
2 (3g) and who suffers damages caused by the filling of a container that is not a
3 department of transportation cylinder by another retail supplier who is not so
4 licensed may bring an action against the unlicensed retail supplier to do any of the
5 following:

6 1. Enjoin the unlicensed retail supplier from distributing liquefied petroleum
7 gas at retail until the retail supplier receives the required license.

8 2. Receive monetary damages equal to 3 times the amount of any monetary loss
9 sustained or \$2000, whichever is greater, multiplied by each day that the unlicensed
10 supplier is not licensed under sub. (3g).

11 (b) Notwithstanding s. 814.04 (1), a retail supplier who prevails in an action
12 under par. (a) shall be awarded reasonable attorney fees.

13 (c) An action under this subsection shall be commenced within 180 days after
14 the cause of action accrues or be barred.

15 **SECTION 25.** 101.16 (6) of the statutes is amended to read:

16 101.16 (6) EXEMPTION. This section ~~shall~~ does not apply to railroads engaged
17 in interstate commerce or to equipment used by them.

18 **SECTION 26.** 101.19 (1) (L) of the statutes is created to read:

19 101.19 (1) (L) Issuing licenses to retail suppliers of liquefied petroleum gas
20 under s. 101.16 (3g).

21 **SECTION 27.** 182.0175 (1) (bv) of the statutes is created to read:

22 182.0175 (1) (bv) "Private transmission facilities" are transmission facilities
23 that are owned by a person, other than a governmental unit, and that are located on
24 private property owned or leased by that person and that do not cross a public
25 right-of-way.

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1 **SECTION 28.** 182.0175 (1) (c) (intro.) of the statutes is renumbered 182.0175 (1)
2 (c) and amended to read:

3 182.0175 (1) (c) "Transmission facilities" includes all pipes, pipelines, wires,
4 cables, ducts, wirelines and associated facilities, whether underground or
5 aboveground, regardless of the nature of their transmittants or of their in-service
6 application. The term includes, but is not restricted to, utility facilities,
7 government-owned facilities, facilities transporting hazardous materials,
8 communications and data facilities, drainage and water facilities and sewer systems.
9 The term does not include any of the following: culverts.

10 **SECTION 29.** 182.0175 (1) (c) 1. of the statutes is repealed.

11 **SECTION 30.** 182.0175 (1) (c) 2. of the statutes is repealed.

12 **SECTION 31.** 182.0175 (1m) (a) of the statutes is amended to read:

13 182.0175 (1m) (a) *Statewide system.* ~~Transmission facilities owners~~ Owners
14 of transmission facilities, other than private transmission facilities, shall establish
15 or designate a nonprofit organization governed by a board of directors as the operator
16 of a one-call system and shall be members of the system. The one-call system shall
17 be a statewide communication system in which a single operational center receives
18 excavation notices and transmits notice information to affected-member
19 transmission facilities owners. Owners of private transmission facilities may be
20 members.

21 **SECTION 32.** 182.0175 (1m) (b) of the statutes is repealed.

22 **SECTION 33.** 182.0175 (1m) (bm) of the statutes is amended to read:

23 182.0175 (1m) (bm) *Membership fees.* ~~Members~~ A member may be assessed
24 an initial start-up fee equal to the system's costs in adding the member to the
25 one-call system, except that any initial start-up fee may not exceed \$100 for a

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1 member whose transmission facilities serve less than 5,000 customers. For purposes
2 of assessing the initial start-up fee, affiliated transmission facilities owners shall be
3 considered a single member. Under this paragraph, a transmission facilities owner
4 is affiliated with another transmission facilities owner if the transmission facilities
5 owner, directly, or indirectly through one or more intermediaries, controls, is
6 controlled by, or is under common control with, the other transmission facilities
7 owner. Members shall also be assessed a fee per notice of intended excavation
8 activity. Membership in the one-call system ceases if a fee assessed under this
9 paragraph is more than 90 days past due. A transmission facilities owner may be
10 reinstated as a member upon payment of the amount past due.

11 **SECTION 34.** 182.0175 (1m) (d) 4m. of the statutes is created to read:

12 182.0175 **(1m)** (d) 4m. Disclose to persons providing notice that the one-call
13 system does not include private transmission facilities as required under par. (e).

14 **SECTION 35.** 182.0175 (1m) (d) 5. of the statutes is amended to read:

15 182.0175 **(1m)** (d) 5. Inform the person providing notice of the names of
16 affected-member transmission facilities owners who will receive the notice
17 information.

18 **SECTION 36.** 182.0175 (1m) (e) of the statutes is created to read:

19 182.0175 **(1m)** (e) The operator of the one-call system shall ensure through its
20 printed materials distributed to the public, on the Internet, and on the telephone that
21 a person providing notice on intended excavation activity is informed that private
22 transmission facilities are not subject to the one-call system and that the person
23 providing notice is referred to other entities to be contacted by the person for
24 determining the location of private transmission facilities. In providing this

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1 information, the operator shall specifically use the term “propane” in describing the
2 type of private transmission facilities that are not subject to the one-call system.

3 **SECTION 37.** 182.0175 (2m) (bm) (title) of the statutes is created to read:

4 182.0175 **(2m)** (bm) (title) *Local governmental units.*

5 **SECTION 38.** 182.0175 (2m) (br) of the statutes is created to read:

6 182.0175 **(2m)** (br) *Private transmission facilities.* Paragraphs (a) to (bm) do
7 not apply to owners of private transmission facilities.

8 **SECTION 39. Nonstatutory provisions.**

9 (1) SUBMISSION OF PROPOSED RULES. No later than the first day of the 6th month
10 beginning after the effective date of this subsection, the department of commerce
11 shall submit in proposed form the rules being promulgated under section 101.16 (2)
12 of the statutes, as created by this act, to the legislative council staff under section
13 227.15 (1) of the statutes. Notwithstanding section 227.137 (2) of the statutes, the
14 secretary of administration may not require the department of commerce to prepare
15 an economic impact report for these rules.

16 **SECTION 40. Effective dates.** This act takes effect on the day after publication,
17 except as follows:

18 (1) The renumbering and amendment of section 101.16 (4) of the statutes and
19 the creation of section 101.16 (4) (title), (b), and (c) of the statutes take effect on the
20 first day of the 6th month beginning after publication.

21 (2) The treatment of section 182.0175 (1) (bv) and (c) (intro.), 1., and 2., (1m)
22 (a), (b), (bm), (d) 4m. and 5., and (e), and (2m) (bm) (title) and (br) of the statutes take
23 effect on the first day of the 13th month beginning after publication.

24 (3) The treatment of section 101.16 (3g), (3r), and (5m) of the statutes the
25 renumbering and amendment of section 101.16 (5) of the statutes, and the creation

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1 of section 101.16 (5) (title), (b), (c), and (d) of the statutes take effect on the first day
2 of the 16th month beginning after publication.

3 (END)